

REMARKS

Claims 14, 15, 33-42, 45, 46, 48-50, 56, 60-64 are pending in the present application. No additional claims fee is believed to be due.

Claims 14, 33, 38, 39, 45, 46, 48, 49, 50, 60, 62, and 63 have been amended to further clarify the invention.

Claims 56 has also been amended to define the pH as between 9 and 10.5. Basis for the amendment is found at *inter alia* page 26, lines 17-18.

No new matter is believed to have been added.

Rejection Under 35 USC 103(a) Over Vogel et al (U.S. Pat. No. 5,798,107)

The pending claims have been rejected under 35 USC 103(a) as being unpatentable over Vogel.

Notably, the Office Action dated 09/30/2003 at paragraph 4, correctly points out that Vogel fails to specify *inter alia* the pH range of the claimed composition. The Examiner, referring to the Applicant's previous claim limitation of a "pH of more than about 3," stated the following:

"[T]he Examiner notes that selecting a pH value within the broadly claimed range of more than about 3.5 would have been obvious for various reasons. First, the Examiner notes that it is well known in the art to use fabric treating compositions having a pH within the claimed range. This is, in fact, a conventional pH range for fabric treating compositions. On the other hand, the Examiner notes that the composition in Vogel et al. appear to inherently fall within the claimed pH range due to the fact that they do not contain any strong acidic components. Finally, adjusting the pH range such that it falls within an operable level would have been obvious to one having ordinary skill in the art since an inoperable or non-preferred pH level would render the composition useless or undesirable. In this manner the claimed pH range would have been obvious to one having ordinary skill in the art in view of the teaching of Vogel et al."

In response, Applicants have amended the claims to the most preferred pH range of 9 to about 10.5 (opposed to greater than about 3.5), which according to page 26, lines 12-18 of the specification, improves the solubility of the shape retention polymer.

Applicant submits the Office Action fails to provide any motivation to arrive at the specific pH range of 9 to about 10.5. Applicant reminds the Office that the mere fact that the prior art may be modified does not make the modification obvious unless the prior art suggests the desirability of the modification. *See In re Fritch*, 23 USPQ 2d 1780 (Fed. Cir. 1991). "The fact that the claimed invention is within the capability of one of ordinary skill in the art is not sufficient by itself to establish prima facie obviousness." MPEP 2143.01

In view of the foregoing amendments and arguments, Applicants submit the rejection is overcome.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC section 103 for the pending claims. Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied reference. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 14, 15, 33-42, 45, 46, 48-50, 56, 60-64.

Respectfully submitted,

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